UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,846	02/18/2004	Shaun Thomas Broering	9527L	2517

7590 04/16/2010

The Procter & Gamble Company
Intellectual Property Division
Winton Hill Technical Center-Box 161
3110 Center Hill Avenue
Cincinnati, OH 45224

EXAMINER	
AFTERGUT, JEFF H	

ART UNIT	PAPER NUMBER
1791	

MAIL DATE	DELIVERY MODE
04/16/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHAUN THOMAS BROERING,
MATTHEW WILLIAM WALDRON,
and DANIEL CHARLES PECK

Appeal 2009-013894
Application 10/780,846
Technology Center 1700

Decided: April 16, 2010

Before CATHERINE Q. TIMM, LINDA M. GAUDETTE, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision to reject claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Appellants' invention relates to a method of making flexible bags from a continuous web of sheet material (Spec. ¶ [0005]). In particular, the invention is directed to disengaging the overlapping portions of a folded sheet material after deformations have been formed in both portions of the sheet material (Spec. ¶ [0004]). Claim 1 is illustrative:

> 1. A method of making an article having elastic-like behavior comprising the steps of:
>
> introducing a sheet material having at least one overlapped portion, the sheet material having a c-shaped cross section;
>
> forming said overlapped portion of sheet material into a strainable network including a plurality of first regions and a plurality of second regions, said first regions being substantially un-deformed and said second regions being formed into disengagable pleat elements; and
>
> disengaging said pleat elements using a disengaging means.

The Examiner relies upon the following evidence:

First Named Inventor	*Document No.*	*Issue or Pub. Date*
Rowe	US 2,615,375	Oct. 28, 1952
LaFleur	US 4,481,006	Nov. 6, 1984
Buchman	US 5,024,642	Jun. 18, 1991
Muller	US 5,279,095	Jan. 18, 1994
Adelmann	US 5,564,252	Oct. 15, 1996
Cronauer	US 5,709,069	Jan. 20, 1998
Henaux	US 5,845,463	Dec. 8, 1998
Yisha	US 5,956,929	Sep. 28, 1999
Meyer	US 6,394,652 B2	May 28, 2002
Hiramoto	US 6,446,684 B1	Sep. 10, 2002
Bohn	US 6,635,139 B2	Oct. 21, 2003
Bustin	UK 1,301,198	Dec. 29, 1972

The Examiner maintains, and Appellants seek review of, the following rejections:

1. The rejection of claims 1, 3, 12-16, 18, and 19 under 35 U.S.C. § 103 as unpatentable over Bustin in view of Meyer, and optionally in view of Buchman or Bohn;
2. The rejection of claims 2, 4, 10, and 20 under 35 U.S.C. § 103 as unpatentable over Bustin in view of Meyer, and optionally in view of Buchman or Bohn, as applied to claim 1, and further in view of Cronauer;
3. The rejection of claims 2, 4-11, 17, 19, and 20 under 35 U.S.C. § 103 as unpatentable over Bustin in view of Meyer, and optionally in view of Buchman or Bohn, as applied to claim 1, and further in view of Rowe, La Fleur, Yishida, or the combination of Hiramoto, Henaux, Adelmann and Muller.

With respect to the first rejection, Appellants do not present separate arguments in support of patentability as to any individual claim or claim grouping, but argue all rejected claims as a group. Therefore, we select independent claim 1 to represent the group of rejected claims in addressing the following issue.

II. DISPOSITIVE ISSUE

Did the Examiner reversibly err in finding that one of ordinary skill in the art would have a reasonable expectation of success in using the process of Bustin on the c-shaped sheet taught by Meyer? We answer this question in the negative.

III. FINDINGS OF FACT

1. Bustin teaches that bags can be made in a continuous process by extruding a tubular web, folding over a single flat web, or slitting or cutting a longitudinal edge of a tubular web (Bustin, p. 1, ll. 27-40). Bustin teaches that in each type of manufacture, the two layers of very thin polyethylene tend to adhere together (Bustin, p. 1, ll. 42-44).
2. Bustin teaches two embodiments of preparing bags. In the first, a tubular web is flattened, fed through embossing rollers and permitted to pucker, and the layers separated by introducing an air bubble between the layers (Bustin, p. 3, ll. 10-33). In the second embodiment, a single layer is embossed and then folded and formed into bags (Bustin, p. 4, ll. 8-41).
3. Meyer teaches that bags can be constructed from flexible sheet material that is folded upon itself along a fold line or from a continuous tube of sheet material (Meyer, col. 2, ll. 16-29).
4. Meyer is directed towards deeply-embossed deformations in the flexible sheet material of a bag body in regions extending across the bag surface (Meyer, col. 2, ll. 39-43). The teachings of Meyer are primarily directed to the location and structure of the deformations on the bag body (*see e.g.,* Meyer, col. 2, ll. 43-48).
5. Meyer teaches that "[t]he flexible bags may be fabricated from formed sheet material or, alternatively, the flexible bags may be fabricated and then subjected to the methods for forming the sheet material" (Meyer, col. 9, ll. 6-9).

IV. PRINCIPLES OF LAW

"[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious *unless its actual application is beyond his or her skill.*" *KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) (emphasis added). Therefore, evidence showing there was no reasonable expectation of success can support a conclusion of non-obviousness. *In re Rinehart,* 531 F.2d 1048, 1053-54 (CCPA 1976) (finding there was no reasonable expectation that a process combining the prior art steps could be successfully scaled up in view of unchallenged evidence showing that the prior art processes individually could not be commercially scaled up successfully). However, "the expectation of success need only be reasonable, not absolute." *PharmaStem Therapeutics, Inc. v. ViaCell, Inc.*, 491 F.3d 1342, 1364 (Fed. Cir. 2007) (*quoting Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1367–69 (Fed. Cir. 2007)); *see also, e.g., In re O'Farrell*, 853 F.2d 894, 903-04 (Fed. Cir. 1988) ("For obviousness under § 103, all that is required is a reasonable expectation of success.").

V. ANALYSIS

The Examiner has found that one of ordinary skill in the art at the time of the invention would have had a skill level high enough to appreciate the differences in processing a continuous tube and a continuous folded sheet having a c-shaped cross section and to modify the disengaging means of Bustin to appropriately act on the continuous folded sheet (Ans. 14-15). For example, the Examiner indicates that one of ordinary skill in the art might have retained the edge of the c-folded material where it was slit in order to

enable airflow within the c-folded material, in effect resulting in a tubular member such as taught by Bustin (Ans. 9). The Examiner's finding is reasonable.

Appellants argue that an expectation of success cannot be presumed in combining the teachings of Bustin and Meyer, since the dynamics involved in controlling inflation of a closed tube, as taught by Bustin, and the handling of an open sheet, as taught by Meyer, are vastly different (Br. 4). Appellants give the example of inflating a Mylar balloon and attempting to inflate a Mylar sheet (Br. 4).

Appellants' arguments are not specific about the difference in "dynamics" in processing a continuous tube and a continuous folded sheet or how the "dynamics" of a c-shaped sheet would not be appropriate for the invention of Bustin. Thus, Appellants' arguments are insufficient to cast doubt on the Examiner's reasonable finding presented above. In fact, Appellants' arguments are so general in nature that they fail to point to any specific error in the Examiner's stated findings regarding an expectation of success of a skilled artisan.

Further, we note that Meyer specifically teaches embossing a c-folding sheet material that has already been formed into a bag. We find no reason why one of ordinary skill in the art could not use the air bubble taught by Bustin to disengage the layers of an embossed bag, as in Appellants' Mylar balloon inflation example.

Although not addressed by Appellants, we further agree with the Examiner that Buchman and Bohn are further evidence that a flattened tube

and a c-folded sheet are art recognized equivalents in the art of bag manufacturing (Ans. 8).

Although Appellants argue each rejection separately, Appellants raise no issues above and beyond those discussed above with respect to claim 1. Accordingly, we need not address each rejection separately.

VI. CONCLUSION

On the record before us[1] and for the reasons discussed above, we sustain the rejections maintained by the Examiner.

VII. DECISION

We affirm the Examiner's decision.

VIII. TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

cam

The Procter & Gamble Company
Intellectual Property Division
Winton Hill Technical Center-Box 161
3110 Center Hill Avenue
Cincinnati OH 45224

[1]Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2008).